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| 09/776,530      | 02/03/2001  | Garth Aaron Hystad   | 45303-00070         | 5215             |

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EXAMINER

HORTON, YVONNE MICHELE

| ART UNIT | PAPER NUMBER |
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3635

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

# Office Action Summary

Application No.  
09/776,530

Applicant(s)  
Garth Hystad

Examiner  
YVONNE M. HORTON

Art Unit  
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 29, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 5-8, 10, 11, 17, 33-35, and 37-48 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-8, 10, 11, 33-35, and 38-48 is/are rejected.
- 7) ☒ Claim(s) 17 and 37 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

## **DETAILED ACTION**

### ***Withdrawal of Allowable Subject Matter***

Allowableness of claims 11,33-35 and 38 have been withdrawn in light of a more careful review of the references.

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,5 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al. Regarding claims 1 and 33, MILES discloses a deck system including a floor member (16,7) having top, bottom and at least three sides; deck support means (11); and first metal facing means (6,17), column 3, lines 45 and 67, and a second metal, column 4, line 5, facing means (4) positioned to cover the deck support means (11); wherein the deck has an outer edge formed by at least one of the sidewalls (S) of the floor members (16), see the marked attachment. MILES discloses the basic claimed deck except for the floor members being formed from a wood composite material. BUHRTS et al. teaches that it is known in the art to form the floor members (15) of a decking system from a wood composite, column 1, line 51. Thus, it would have been obvious to one having ordinary skill in the art to form the flooring member of MILES from the wood composite material, as taught by either BUHRTS et al. in order to have a decking system that is not only aesthetically pleasing, but that has less signs of deterioration, can expand and contract to different

temperatures and that is moisture resistant. Regarding claim 5, the first facing is made from an aluminum metal material, column 4 line 20,29 and 33.

3. Claims 6,7,10 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al., as applied to claim 1, and further in view of US Patent #4,907,387 to TURNBULL. MILES, as modified by BUHRTS et al., discloses the basic claimed deck system except for the first facing being coated with a surface finish. In particular to claim 6, TURNBULL teaches that it is known in the art to coat the facing (16) of a deck member (12) with a finish coating (34). Thus, it would have been obvious to one having ordinary skill in the art to provide the first facing of MILES with the finish coating of TURNBULL in order to ensure that the deck has a slip-free or slip resistant upper or wear layer. The finish coating prevents water from accumulating on the deck upper surface. Regarding claim 7, the finish coating of TURNBULL are sand particles which are similar in color to both natural and synthetic wood. In reference to claim 10, TURNBULL, column 3, lines 1-9, teaches that the sand/grit finish coating (34) aids in providing traction to traffic thereon. Due to the fact that there is additional traction, the surface of the first facing is being preserved because the finish surface would need to be worn prior to traffic wearing on the first facing. In reference to claim 34, it would have been an obvious matter of design choice to match the surface finishing means with the facings.

4. Claims 8 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al, as applied to claim 1 above, and further in view of US Patent #6,544,596 to CLEMENS et al. As detailed

above, MILES, as modified by BUHRTS et al. discloses the basic claimed deck assembly except for the metal being treated with a powder paint. Although MILES does not disclose treating his metal material, it is old and very well known in the art to treat metal items knowingly exposed to external conditions in order to prevent corrosion from exposure thereto. Further, CLEMENS et al. teaches that it is known in the art to treat metal with a powder paint material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to treat the metal facing of MILES, as modified by BURHTS et al., with the powder paint, as taught by CLEMENS et al.

Claims 6,10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al., as applied to claim 1, and further in view of US Patent #4,907,387 to TURNBULL and US Patent #6,544,596 to CLEMENTS et al. MILES, as modified by BUHRTS et al., discloses the basic claimed deck system except for the first facing being coated with a surface finish. In particular to claim 6, TURNBULL teaches that it is known in the art to coat the facing (16) of a deck member (12) with a finish coating (34). In reference to claim 10, TURNBULL, column 3, lines 1-9, teaches that the sand/grit finish coating (34) aids in providing traction to traffic thereon. Due to the fact that there is additional traction, the surface of the first facing is being preserved because the finish surface would need to be worn prior to traffic wearing on the first facing. Although MILES does not disclose treating his metal material, it is old and very well known in the art to treat metal items knowingly exposed to external conditions in order to prevent corrosion from exposure thereto; and the surface finish helps keep the deck slip-free or slip resistant. The finish

coating prevents water from accumulating on the deck upper surface. . Further, CLEMENS et al. teaches that it is known in the art to treat metal with a powder paint material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to treat the metal facing of MILES, as modified by BURHTS et al., with the surface of TURNBULL and the powder paint, as taught by CLEMENS et al.

5. Claims 38,41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al., as applied to claim 1 above, and further in view of US Patent #6029,954 to MURDACA. MILES, as modified by BUHRTS et al., discloses the basic claimed deck assembly except for explicitly including a rail member. MURDACA teaches that it is known in the art to provide a deck assembly with rail means (10). Regarding claims 38 and 42, the rail means (10) includes first and second posts (20-28) and first/upper and second/lower horizontal metal, column 4, lines 54-56, cross members (16,18) attached thereto. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the decking system of MILES, as modified by BUHRTS et al., with the rail means of MURDACA in order to stabilize and provide additional support to a user. Regarding claims 41 and 43, MURDACA further includes an attachment means (40) for each of the cross members (16,18) wherein two slots formed by the fact the attachment means (40) is U-shaped and forms a channel/slot between the arms of the U-shape. In further reference to claim 42, MURDACA also includes the use of balusters (20).

Claims 38,39,44,45,47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,229,433 to MILES in view of US Patent #6,453,630 to BUHRTS et al., as

applied to claim 1 above, and further in view of US Patent #6029,954 to MURDACA and US Patent #6,544,596 to CLEMENS. MILES, as modified by BUHRTS et al., discloses the basic claimed deck assembly except for explicitly including a rail member. MURDACA teaches that it is known in the art to provide a deck assembly with rail means (10). CLEMENS et al. teaches that it is known in the art to treat metal with a powder paint material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to treat the metal facing of MILES, as modified by BURHTS et al., with the powder paint, as taught by CLEMENS et al. And to provide the system with the rail means of MURDACA in order to prevent corrosion from exposure thereto and to stabilize and provide additional support to a user. Regarding claims 39,44,45,47 and 48, it too would have been obvious to coat the balusters and first and second facings.

***Allowable Subject Matter***

6. Claim 17 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
  7. The statement of reasons for the indication of allowable subject matter remains as indicated in the previous Office Action dated 6/11/02.
  8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.
- Yvonne M. Horton

December 29, 2003